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8 Attorneys for Plaintiffs,
9 UMG RECORDINGS, INC.; CAPITOL
10 RECORDS, INC.; FONOVISIA, INC.; and
11 INTERSCOPE RECORDS
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 UMG RECORDINGS, INC., a Delaware
18 corporation; CAPITOL RECORDS, INC., a
19 Delaware corporation; FONOVISIA, INC., a
20 California corporation; and INTERSCOPE
21 RECORDS, a California general partnership,

22 Plaintiffs,

23 v.

24 JOHN DOE,

25 Defendant.
26
27
28

CASE NO. 4:08-CV-01038-SBA

Honorable Sandra Brown Armstrong

***EX PARTE* APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER**

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for July 2, 2008 at 3:30 p.m. to October 1, 2008. Plaintiffs further request, pursuant to
3 the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an additional
4 60 days – until August 19, 2008 – to serve Defendant with the Summons and Complaint. As set
5 forth in greater detail below, Plaintiffs have not yet discovered the true identity of the Doe defendant
6 in this case, and will be unable to do so unless the Court grants Plaintiffs' *Ex Parte* Application for
7 Leave to Take Immediate Discovery, filed on February 21, 2008 and entered as Docket No. 3.
8 Because Plaintiffs do not yet know the true identity of the Doe defendant, additional time is needed
9 to file a First Amended Complaint naming Defendant personally and then to serve Defendant with
10 process. In support of their request, Plaintiffs state as follows:

11 1. Plaintiffs requested, and on May 20, 2008 the Court granted, a previous continuance
12 of the case management conference in this matter.

13 2. Plaintiffs filed the Complaint for Copyright Infringement against Defendant John Doe
14 ("Defendant") on February 21, 2008. Plaintiffs did not have sufficient identifying information to
15 name the defendant in the Complaint, but were able to identify Defendant by the Internet Protocol
16 address assigned by Defendant's Internet Service Provider ("ISP").

17 3. In order to determine Defendant's true identity, Plaintiffs filed their *Ex Parte*
18 Application for Leave to Take Immediate Discovery on February 21, 2008, seeking the Court's
19 permission to serve a Rule 45 subpoena on the ISP. The Court has not yet ruled on Plaintiffs' *Ex*
20 *Parte* Application for Leave to Take Immediate Discovery.

21 4. If the Court grants Plaintiffs' *Ex Parte* Application for Leave to Take Immediate
22 Discovery, Plaintiffs will attempt to determine Defendant's identity by serving a Rule 45 subpoena
23 on the ISP seeking identifying information including Defendant's name, address, and telephone
24 number. If Defendant is identified, Plaintiffs will give Defendant written notice of their claim and
25 attempt to contact Defendant and resolve the dispute. If the dispute cannot be resolved, Plaintiffs
26 plan to file a First Amended Complaint naming Defendant individually and then proceed to serve
27 process upon him or her.
28

1 5. However, unless the Court grants Plaintiffs' *Ex Parte* Application for Leave to Take
2 Immediate Discovery, Plaintiffs cannot identify the Doe defendant, initiate settlement talks, or file
3 an amended complaint and begin service attempts.

4 6. Given the foregoing circumstances, and because there is no known defendant with
5 whom to confer, a case management conference is unnecessary at this time. Plaintiffs therefore
6 respectfully request that the Court continue the case management conference currently set for July 2,
7 2008 at 3:30 p.m. to October 1, 2008, or such other date as conveniences the Court. Plaintiffs
8 further request an additional 60 days – until August 19, 2008 – to effectuate service.

9 7. Plaintiffs submit that their inability obtain a discovery order thus far has prevented
10 them from ascertaining the Doe defendant's true identity, and constitutes good cause for any delay in
11 perfecting service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating
12 good cause standard for service extensions). Unlike a traditional case in which the defendant is
13 known by name and efforts to serve can begin immediately after filing the complaint, in this case
14 Plaintiffs must first obtain the identity of the defendant through the subpoena to the ISP. This Court
15 has discretion to enlarge the time to serve even where there is no good cause shown. *Henderson v.*
16 *United States*, 517 U.S. 654, 658 n. 5 (1996).

17 8. Because the copyright infringements here occurred in 2007, the three-year limitations
18 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
19 prejudice to the Defendant from any delay in serving the Complaint.

20 9. Plaintiffs will provide Defendant with a copy of this request and any Order
21 concerning this request when service of process occurs.

22
23 Dated: June 17, 2008

HOLME ROBERTS & OWEN LLP

24
25 By: /s/ Dawniell Alise Zavala
26 Dawniell Alise Zavala
27 Attorney for Plaintiffs
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[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to August 19, 2008.

IT IS FURTHER ORDERED that the case management conference currently set for July 2, 2008 at 3:30 p.m. be continued to October 1, 2008.

Dated: _____

By: _____
Honorable Sandra Brown Armstrong
United States District Judge